SUPREME COURT OF THE UNITED STATES

JAMES COUGHLIN ET UX. *v.* WESTINGHOUSE BROADCASTING AND CABLE, INC.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 85–1593. Decided June 16, 1986

The petition for a writ of certiorari is denied.

CHIEF JUSTICE BURGER, with whom JUSTICE REHNQUIST joins, dissenting from the denial of certiorari.

In *Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.*, 472 U. S. ——, —— (1985) (BURGER, C. J., concurring), I wrote to express my agreement with JUSTICE WHITE that *New York Times* v. *Sullivan*, 376 U. S. 254 (1964), should be reexamined. Petitioner in this petition asks this Court for such a reconsideration. I dissent from the Court's refusal to grant certiorari and give plenary attention to this important issue.

Respondent conducted an investigation into the alleged failure of Philadelphia police to enforce state liquor laws against an "after hours" bar. In the course of that investigation, they hid a camera across the street from the bar and videotaped police officers entered and leaving the bar. Respondent ultimately broadcast a videotape of petitioner leaving a bar on October 11, 1981. The videotape stated that "the only paperwork we saw [petitioner] doing was *carrying this envelope* out of the Club less than a minute after he went in." A freeze frame with a circle around an object in petitioner's hand was used to emphasize the point. The announcer went on to say that officer had difficulty finding the proper key to start his patrol car and that he was not wearing his uniform jacket or hat, "all standard items officers on patrol are required to have." The clear implication of the broadcast was that petitioner had accepted a bribe.

Respondent made no attempt to obtain petitioner's explanation for these events other than an "ambush" interview four months after the fact. In this "interview," a reporter for respondent approached petitioner with cameras whirling as he came off of his all-night shift and asked what he had been doing four months earlier on the night of October 11, 1981. Petitioner said "this here is harassment" and declined to answer questions at that time.

Petitioner filed a libel suit in District Court. He alleged that even a minimal investigation of the events of that evening would have revealed that he was a rookie policeman, patrolling alone for the first time on October 11, 1981; that early in his shift, he was ordered to investigate a vandalism complaint at the bar; that after talking to the bar's stewart, he returned to the patrol car and filled out his incident report book; and that he was not required to wear his jacket or hat while on patrol. Petitioner further alleged that the purported "envelope" was in fact nothing other than his incident report book. The District Court concluded that petitioner had raised a genuine issue of material fact concerning the truth of the allegedly defamatory statements and that the broadcast was capable of a defamatory interpretation. Applying our decision in *New York Times* v. *Sullivan*, however, the District Court concluded that petitioner had not introduced sufficient evidence of "actual malice" on the part of respondent to withstand a motion for summary judgment. The Court of Appeals affirmed, concluding that the District Court had properly evaluated petitioner's evidence of actual malice. One judge concurred, observing that "[t]he *New York Times* standard makes it hard enough for a public figure to win a libel suit, even when faced, as here, with what any fair observer must agree is egregious conduct on the part of the media." 780 F. 2d 340, 349 (Becker, J., concurring).

Petitioner has raised an important federal question that we should review. He has been accused of accepting a bribe on the basis of a cursory investigation, yet his libel suit to clear

his name has been found to be constitutionally barred. The District Court observed that "[a]n issue exists . . . as to whether [respondents], with a minimum of effort, could have discovered the truth. The Supreme Court's mandate, however, is clear: 'reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing.'" 603 F. Supp. 377, 388 (quoting *St. Amant* v. *Thompson*, 390 U. S. 727, 730 (1968)). I would grant certiorari and set this case for argument to determine whether the Court's "mandate" remains an appropriate one.